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Appl. no. 10/612,002
Atty. ref. 0-010302USWZFN

REMARKS

Claims 2-9 and 11-13 are pending in this application. Claims 1 and 10 were canceled previously.

Claim 5 has been rejected under 35 U.S.C. § 112, ¶ 2, as indefinite for reasons of record in an earlier Action. Applicants apologize for unintentionally failing to address this rejection in their previous response. At page 5, lines 8-11 of the specification as filed, the term "radio absorbing material" is used and several exemplary materials are set forth. Accordingly, Applicants respectfully submit that the term in claim 5 is properly supported by the specification as filed and is not indefinite.

Applicants gratefully acknowledge withdrawal of the rejections listed at page 3 of the 2/15 Action.

All pending claims were rejected in the 2/15 Action. Each rejection is addressed separately below.

35 U.S.C. § 112, ¶ 1 (written description)

A. Claims 11 & 13

These claims, as well as all claims dependent from claim 11, have been rejected due to use of the phrase "at least one sensing method other than visual inspection and surface profiling." Applicants respectfully submit that this rejection is improper.

First, claims 1-2 as filed included visual inspection and surface profiling as sensing methods against which the claimed covering could protect. Claims 11 and 13 are more specific as to which sensing methods are avoided, i.e., they are merely a species of a previously claimed genus. Given the nature of the invention and description, Applicants clearly were in possession of the invention now claimed.

Second, Figure 1 and associated text clearly exemplifies and describes the now claimed embodiment. Components 10 and 11 involve visual protection and surface profiling protective components and, between those components and adhesive layer 16, one or more additional layers with protective components (12-15) are shown.

B. Claim 12

This claim has been rejected due to use of the phrase "said second sheet overlaying and being removably adhered to said sheet." Applicants respectfully submit that this rejection is improper. More specifically, Applicants point to the paragraphs that

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bridge pp. 5-6 and pp. 13-14 of the specification as examples of textual support for the limitation in question.

Because the application as filed clearly shows possession of the claimed invention, reconsideration and withdrawal of these rejections are respectfully solicited.

Anticipation, 35 U.S.C. § 102(b)

Claims 2-5, 7-9, and 11 have been rejected as anticipated by U.S. Patent No. 4,953,922 (hereinafter the '922 patent). Applicants respectfully traverse this rejection. Specifically, Applicants respectfully submit that the '922 patent does not teach claim 11 nor any of the claims dependent therefrom. For ease of reference, certain portions of the '922 patent¹ are reproduced below.



FIG. 2

The surface coating 5 supports a plastic layer 6 having a precisely determined thickness, the outwardly turned surface of which forms said front surface 2. The front surface of the foil is textured by means of an embossment 7. This embossment may consist of a large number of tightly packed grooves, which form an irregular pattern. An example of such a pattern is shown in a view of the material in FIG. 2.

Thus, using words directly from the '922 patent, the outermost surface includes "a large number of tightly packed grooves, which form an irregular pattern."

Applicants note that nowhere does the '922 patent teach that the outermost surface bear a colored imprint, image, etc. Instead, the '922 patent teaches only protection against visual detection through this type of pattern embossing; see also, e.g., the table bridging cols. 5-6:

The 2/15 Action cites col. 3, line 7 in support of its position that the '922 patent teaches all limitations included in the specified claims. For convenience, the entire paragraph that bridges cols. 2-3 as well as FIG. 1 (to which the cited passage refers) are reproduced below:

¹ Fig. 2 and lines 15-22 of col. 3.

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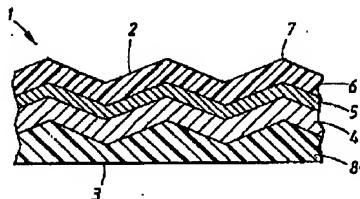


FIG. 1

According to FIG. 1 the foil according to the invention, which is designated by 1, exhibits a front side 2, which is intended to be turned outwards towards the potential observer or detector, and a backside which is to be turned towards the object which is to be camouflaged. The foil is built up from a number of layers. Near the backside 3 there is a thin metallic foil 4 with a reflective surface. It is important that the foil should be reflective on the surface which is turned towards the front side 2. It is advantageous that even its inner surface be reflective, but it can however, alternatively be provided with an underlying layer, even colored throughout, as a carrier for increasing the mechanical strength without affecting significantly the camouflaging properties mentioned below. On the metallic foil 4 is applied a surface coating 5 which has the property of being absorbent for visible light and near-infrared radiation (wave lengths up to approximately 2 μm) but transparent for thermal-infrared radiation (the wave length region 3-100 μm).

When the textual line in question is viewed in context, one can see that the "even colored throughout" is used in connection with foil 4, which very clearly is an inner layer. In contrast, claim 11 requires that the colored camouflaging image be borne on an exterior surface. Thus, the '922 patent does not teach or suggest every limitation of the presently claimed invention.

Applicants further note that claim 11 requires a colored camouflaging image. Although not entirely clear on this point, the 2/15 Action appears to equate this term to coloring per se, which does not appear to be appropriate in view of the description.

Obviousness, 35 U.S.C. § 103(a) – claims 6 and 11-13

At present, Applicants are willing to base most of their traversal primarily on the fact that the '922 patent does not teach or suggest as much as the 2/15 Action implies. Specifically, claim 11 has been shown to be neither taught nor suggested, so each of these dependent claims are further patentable.

With respect to claims 6 and 11, Applicants further note at this time only that the 2/15 Action fails to explain how the selected portions of the '058 patent's teaching can be combined with that of the '922 patent; specifically, Applicants submit that the 2/15 Action has failed to indicate which of the layers from the '922 patent would need to be modified, how the modification would be accomplished without destroying the efficacy of the article taught by the '922 patent, etc.

With respect to claims 12-13, Applicants further note at this time only that the modification suggested in the 2/15 Action would seem to destroy its efficacy. Specifically, if an overlying, removably adhered sheet which bears a different image on an exterior surface were included in the article described in the '922 patent, how would the primary camouflaging effect and purpose of that article not be compromised?

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Applicants respectfully submit that this is an improper hindsight rejection and should be withdrawn.

Conclusion

Applicants submit that claims 2-9 and 11-13 are neither taught nor suggested by any of the references of record, either alone or in combination. Because no other objections or rejections of these claims have been made, Applicants respectfully request withdrawal of the outstanding rejections and allowance of all claims.

This Response is being filed within the shortened statutory period. No extension of time fee is believed to be necessary although, as described above, an RCE fee accompanies this submission. If any additional fees are or become due, they can be charged to the deposit account mentioned in the first page.

Inquiries concerning this submission should be directed to the attention of the undersigned. The correspondence address of record remains unchanged.

Respectfully submitted,



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